IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2004

CORAM:

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.4716 of 1997

M.Latchumanan .. Petitioner

-vs-

1. The Union Territory of Pondicherry
rep. by the Chief Secretary
Government of Pondicherry
Pondicherry.

2. The Inspector General of Police
Police Headquarters
Pondicherry-605 001.

3. The Superintendent of Police (South)
Natesan Nagar
Pondicherry.

4. The Station House Officer
Thirukkanur Police Station
Thirukkanur
Pondicherry-605 501.

5. The Deputy Inspector General
Central Bureau of Investigation
Haddows Road
Chennai-600 006. .. Respondents

PRAYER: Writ petition filed filed under Article 226 of the Constitution of India for the issue of a writ of Mandamus directing the second respondent to file a First Information Report on the basis of the complaint made by the petitioner on 3.11.199 hand over the investigation of the same to the Central Bureau of Investigation, the fifth respondent herein; directing the fifth respondent to take over the investigation of the case and proceed as per law; directing the first respondent herein to provid e all assistance to the fifth respondent in this respect; directing respondents-1 to 4 to provide all documents pertaining to the case free of cost to the petitioner to facilitate him to assist and cooperate with the investigation by the fifth respondent ; directing the first respondent to pay to the petitioner a just and reasonable amount as compensation and to award costs.

For petitioner : Mr.P.Rathinam

For respondents-1 to 4 : Mr.Vijay Anand for
Govt. Pleader (Pondicherry)

For 5th respondent : Miss V.Velumani
Addl. Government Pleader

:ORDER

The petitioner has prayed for a direction to the second respondent to hand over the investigation of the complaint to the petitioner dated 3.11.1996 to the Central Bureau of Investigation and to direct the C.B.I. to take over

the investigation and pro ceed as per law. The petitioner has further prayed for a direction to the first respondent to pay to the petitioner, just and reasonable amount as compensation.

2. The petitioner, claiming to be an M.Sc. (Agriculture) graduate, states that he had worked as Scale-I Officer in the UCO Bank between 1 979 and 1987. Thereafter, he wanted to serve the public and therefore, he resigned his job and settled in his villa ge. In 1984, he started to run a cinema theatre and also started a Middle School, namely, Sudha English School in 1990. In 1993, he also started an Institute by name Indira Gandhi Industrial Training Institute. As a result of his activities in the are a, he was widely known in Thirukkanur and also at Pondicherry. He claims to be a law abiding citizen, hailing from a family of good economic background and he has never been violating law under any circumstances. He would further state that during Augu st, 1995, he placed orders with one Techno Science Industries in Chennai for the purchase of certain machinery and tools for the students in the training institute. The total cost of machinery was Rs.3.80 lakhs and he has paid Rs.2.70 lakhs in cash. Fo r the balance of Rs.1.10 lakhs, he issued a post-dated cheque dated 2 4.10.1995. However, after receiving the cash, the supplier had supplied machinery only in part and even the partly delivered machineries were found to be with serious defects. They we re also of poor quality. Therefore, he immediately sent a telegram to the industry informing that they should supply the shortage and rectify the defects. On 6.1.1996, he sent a registered letter pointing out the defects and advised them not to present the post-dated cheque. He also indicated his mind to initiate proceedings under the Consumer Protection Act and filed C.C.No.113 of 1996 on the file of the District Consumer Disputes Redressal Forum, Pondicherry. While the same was pending and negotia tion was going on between himself and the supplier, the supplier clandestinely presented the post dated cheque during April, 1996, despite the petitioner's advise against the presentation of the cheque. Thereafter, the supplier chose to file a private c omplaint against the petitioner for an alleged offence under Section 138 of the Negotiable Instruments Act before the VII Metropolitan Magistrate, Chennai. On receipt of the summons, the petitioner duly appeared in the case and also engaged a counsel by name Mr.Chemmal, an Advocate practising at Pondicherry. They were appearing from time to time before the Magistrate. However, on

10.10.1996, he was unable to appear, as he had to attend a funeral ceremony of his close relative and the counsel, who was also his relative, had to attend the funeral ceremony. Therefore, the petitioner had sent a telegram to the Magistrate's Court, praying condonation of the absence and requesting adjournment.

3. On 29.10.1996, when the petitioner was proceeding towards the school via Thirukkanur police station, Mr.Arumugam, Sub Inspector of Police, came running from the police station towards the petitioner and requested him to accompany him to the police st ation. The petitioner was asked to sit and was offered tea. The petitioner was further informed that a warrant has been issued by the Chennai Court and they were required to execute it. The petitioner was further advised that he should take steps to r ecall the warrant, as otherwise, he would be compelled to arrest him and produce him before the Court at Chennai. The Sub Inspector of Police also stated that he and his Inspector may be paid a sum of Rs.5,000/- for settling the matter. As the petition er did not agree, the Sub Inspector called the Head Constable and told him that he had arrested the petitioner and that the petitioner should be put in the lock-up. The petitioner was put in the lock-up by the Constable. The news of the arrest spread an d his Advocate Chemmal came rushing to the police station. After the petitioner apprised him of the incident, the Advocate talked to the Inspector Rameshkanthan and Arumugam, the Sub Inspector. The Advocate was angrily informed that he could do what he can do in the Court. The Advocate advised the petitioner not to pay any money to the police and that he would move the Court for bail. Around 2.00 p.m., the petitioner was offered meals brought from the hotel, which he had refused. He also refused to take the tea which was offered in the evening.

4. The petitioner further states that at about midnight, he was asked to come out of the lock-up and the Inspector threatened the petitioner. He had directed the police personnel present there to beat the petitioner. The Sub Inspector also instigated others to beat the petitioner. Immediately, the Head Constable started to beat the petitioner with lathi indiscriminately all over the body. Even though he cried for help, he was severely beaten up by the policemen. As a result, he swooned. At about 4.00 a.m., when he was woken up, he found himself in the lock-up with bleeding injuries all over the body. His shirt and dhothi were fully drenched in blood due to the injuries. The petitioner was made to undress and removed the Khadi shirt and dhothi which was worn by him with blood stains. The petitioner was offered colour shirt and white dhothi and before putting them on, his bleeding injuries were washed with water.

5. From Thirukkanur, he was taken to Villupuram by the police jeep and from Villupuram to Chennai by Transport Corporation bus. The petitioner further submits that on 30.10.1996, he was produced before the Magistrate and the petitioner claims that he h ad shown the injuries sustained by him the previous night at the hands of the police personnel. The Magistrate directed the police to take the petitioner to the Government Stanley Hospital. There he was medically examined and found to have sustained si x injuries and the

Chief Medical Officer, who conducted the medical examination, directed admitting the petitioner as in-patient. On 1.11 .1996 at 2.00 p.m., he was discharged. The petitioner states that for sometime, he was undergoing treatment for the injuries of fracture sustained by him. He went to Thirukkanur at 7.30 a.m. and on coming to know of the brutal police attack, the villagers were disturbed and started agitation of road roko demanding stern action and punishment of the policemen. Shopkeepers also voluntarily participated in the agitation. This made the senior Police and the Revenue Officials to respond to the situation and the Sub Divisional Magistrate and the Superintendent of Police visited the place and pacified the agitated publ ic after assuring that an enquiry will be conducted by the Sub Divisional Magistrate. He, along with few village elders, met the Senior Superintendent of Police and apprised him of the facts and the said officer assured to take appropriate action.

6. The petitioner further states that on 3.11.1996, the Sub Divisional Magistrate held an enquiry and recorded the evidence of the petitioner, his Advocate and other witnesses. After the enquiry was over, the petitioner preferred a complaint to the fou rth respondent. On 5.11.1996 also, he sent a letter by Registered Post to the fourth respondent to take action in accordance with law. This was followed by another representation dated 6.11.1996. As there was no proper follow-up action, another reminde r was sent to the third respondent on 30.12.1996 and in view of the inaction even to register the First Information Report, he sent a detailed representation on 25.1.1997 addressed to the Chief Minister of Pondicherry and the Home Minister, seeking their intervention. In spite of repeated representations, there has been no positive response from the respondents and hence, the writ petition.

7. In the counter affidavit filed by the respondents, while denying the various allegations, the third respondent, who has filed the counter affidavit, has stated that the petitioner has projected a false version of the incident. The very statement of the petitioner himself before the Sub Divisional Magistrate would disprove the contention of the petitioner. Before the Magistrate, he had given a different version regarding the occurrence. The learned Sub Divisional Magistrate, who enquired into the i ncident, has given a categorical finding to the effect that neither the Sub Inspector nor the Circle Inspector were present at the time of the assault on the petitioner. The present writ petition has been filed only with a view to cover up the misdeeds of the petitioner himself.

8. The respondents state that they were only discharging their lawful functions enjoined on them in executing the non-bailable warrant issued by the VII Metropolitan Magistrate, Chennai, in C.C.No.3630 of 1 996. The Non-Bailable Warrant has been issued as a result of the failure of the petitioner to attend the Court on the date of enquiry on 10.10.1996. The fact of receipt of tapal from the Circle Inspector enclosing the Non-Bailable Warrant was recorded in the General Diary at 11.10 hours on 29.10.19 96. The fourth respondent took up further legal action to execute the judicial order in accordance with law. The fourth respondent arrested the petitioner at 11.30 hours at Tiruvannamalai Road just at a distance of about 200 metres from

the police stat ion. Soon after the arrest, the petitioner was apprised about the grounds on which he was arrested. Also, with a view to inform the arrest to his close relative, the fourth respondent took steps by sending P.C.1492 at 13.30 hours to the address given b y the petitioner. The Police Constable went to the address and the fourth respondent was informed by wireless that the petitioner's wife was not found in the house. However, the Advocate was available and he was informed. Subsequently, the Constable a lso informed the wife of the petitioner about the arrest of the petitioner. These facts have been recorded in the General Diary at 20.20 hours on 29.10.1996. Therefore, the arrest of the petitioner was in order.

9. It is further stated that the Advocate requested the release of the petitioner on bail, which was, however, not possible, in view of the orders of Court. Granting bail would have amounted to disobeying the judicial order and the fourth respondent di d not have the power to issue such a bail and therefore, the fourth respondent expressed his refusal to enlarge the petitioner on bail. However, the Advocate got wild without any justification and threatened the fourth respondent stating that he would t ake legal action against him and other police officials. The Advocate was not even prepared to listen to the proper reply given by the fourth respondent. The petitioner levelled false allegations against the fourth respondent, only in order to cover up his own misdeeds. The allegations made against the fourth respondent are totally false and incorrect. The statement made before the Sub Divisional Magistrate would disprove the claims of the petitioner. In the statement before the Sub Divisional Magis trate, the petitioner has stated that he had asked the Headmaster of the petitioner school to get some money from the cashier of the theatre and that the Headmaster came to the police station along with a cash of Rs.1,000/-, out of which, the petitioner had given a sum of Rs.200/- to the Head Constable. The petitioner had further stated that his Manager of the Institute also came to the police station. The various other particulars narrated in the statement by the petitioner before the Sub Divisional Magistrate disclose that there was no truth in the various allegations now stated in the affidavit in support of the writ petition.

10. The third respondent further states that the petitioner was involved in various other criminal complaints as accused. For instance, in Crime No.11 of 1986, registered under Section 353, I.P.C. and Crime No.6 of 1992 under Sections 341, 323 and 506, I.P.C. He had also badly behaved with various other authorities in the Government of Pondicherry regarding the running of the Theatre and the Institute. The respondent further submits that as regards the alleged incident, the petitioner had already mad e a complaint to the VII Metropolitan Magistrate, Chennai, who was seized of the matter and it was for that judicial forum to go into the correctness of the complaint given by the petitioner.

11. The allegation that a sum of Rs.5,000/- was demanded as gratification is also denied. It is further stated that the petitioner attempted to escape from the custody of the fourth respondent police station in the absence of the fourth respondent and hence, the Constables who were in charge of the station, used minimum force to apprehend the petitioner. The petitioner also man-handled the police constables Narayanan and Balakrishnan.

Neither the fourth respondent nor any police constable attached t o the police station had caused injuries or assaulted the petitioner. When the petitioner was taken to Madras, at Villupuram, they had to board the Corporation bus proceeding to Madras. But, before boarding into the bus, the petitioner again attempted t o escape from the custody and as a result, some force have been used by the police escort people. It is only in that background, the petitioner sustained injuries and treatment was given at the nearest private hospital at Villupuram for want of time. T he various contentions regarding the alleged treatment given to the petitioner were also denied and the allegation that he was handcuffed was also denied. The petitioner was treated politely. The Advocate, who was the relative of the petitioner, did no t behave properly with the police. He was demanding the release of the petitioner immediately knowing fully well that the fourth respondent has no authority to do so when the Non-Bailable Warrant is pending. Regarding the demand for compensation, the respondents state that the petitioner wants to make a fortune out of the proceedings before this Court and that he was not entitled to any such relief.

12. A reply affidavit has been filed by the petitioner, refuting the contentions raised in the counter affidavit. The petitioner states that in order to protect the erring police, whenever allegations of violation of human rights were made, the police resorted to resisting the allegations terming them as false. Though it is true that he made a statement before the Sub Divisional Magistrate, the other contentions regarding the statement as made by the respondent, were not borne out by records. The al leged statement enclosed in the typed set, which was attributed to the petitioner, was false. The enquiry before the Sub Divisional Magistrate was conducted on 3.11.1996 around late in the evening and it was 9 O' Clock when the petitioner was enquired a nd the statement was made only orally. He was answering the Sub Divisional Magistrate also whenever he had put specific questions. The entire statement was handwritten by some other person attached to the Sub Divisional Magistrate and after completion of the statement, he was asked to sign the statement. However, in view of the fact that his right hand index finger was fractured, he could not sign and therefore, he put up his thumb impression, which was obtained hurriedly. Though he requested for a copy of the statement, the same was not furnished to him. He also wanted to give a complaint to the Sub Divisional Magistrate to file it as a First Information Report. To his dictation, one G.Sukumaran wrote out the complaint and he put his thumb impre ssion and the complaint was submitted to the Sub Divisional Magistrate there itself. His complaint was acknowledged. The petitioner was directed to present the statement to the fourth respondent to be filed as First Information Report. The petitioner f urther states that the facts regarding his arrest were twisted only to show that the Non-Bailable Warrant was being executed. The statement regarding the alleged information to the close relatives of the petitioner were also false. A supporting affidav it of the Advocate Chemmal was also being filed. As regards the two previous cases to which reference has been made, relating to the occurrences on 14.2.1986 and 17.1.1992, the petitioner states that they have ended in acquittal. The statement that he attempted to escape from custody was only a ruse created to suit the statement of the police. No treatment was given in a private hospital at Villupuram.

13. Mr.P.Rathinam, learned counsel for the petitioner, restricted his submissions only to the relief of giving directions to the first respondent to pay a just and reasonable amount as compensation and he has not pressed for the other reliefs for entrus tment of the investigation to the Central Bureau of Investigation, considering the passage of time.

14. Learned counsel contends that the custodial violence in this case was totally inhuman and it is not as though the complaint against him was of any grave criminal misbehaviour. The arrest was only a sequel to a complaint under Section 138 of Negotia ble Instruments Act and the warrant issued by the Magistrate at Chennai. But the manner in which the petitioner was arrested and dealt with by the police has been very positively stated in the Sub Divisional Magistrate's enquiry itself and in fact, the Sub Divisional Magistrate has given findings that the respondents were guilty of custodial violence. The previous cases in which the petitioner was stated to be involved had, in fact, ended in acquittal, which has been suppressed by the respondents in t he counter affidavit. The statement thus made in the counter affidavit regarding the past conduct of the petitioner was intended only to prejudice the mind of the Court. There was absolutely no denial of the fact that the petitioner had sustained sever al injuries while in custody and there is no justification why the petitioner was not taken to the Government Hospital and instead, taken to the to a private Doctor. It was only to suppress the real nature of the injuries sustained by the petitioner. L earned counsel also produced a series of photographs showing the injuries sustained by the petitioner. According to the learned counsel, admittedly, the petitioner was very well known in the area and he was a social worker. The conduct of the responden ts has resulted in not only causing injuries to the body of the petitioner, but also to his reputation. Therefore, he would plead for adequate and just compensation.

15. Learned Government Pleader (Pondicherry) appearing for respondents-1 to 4 contends that the antecedents of the petitioner of being involved in few cases would expose the petitioner as a violent and desperate character. The police was only executing the Non-Bailable Warrant which they were bound to comply with. While doing so, the petitioner resorted to violent and abusive behaviour, and even so, the police had used only permissible minimum force to bring him under control and to take him into cus tody. The petitioner had resorted to man-handling the police personnel and therefore, had to be brought under control. In Villupuram, he was sent to a private Doctor, as the police personnel were hard pressed for time, as the arrested person had to be produced before the Magistrate at Madras. Learned Government Pleader further contends that the trend of recent judgments of the Supreme Court was in favour of directing the parties claiming damages or compensation for alleged custodial violence or cases of electrocution due to bad management of electrical lines, to go before the civil Court instead of invoking Article 226, bearing in mind that several factual and evidentiary issues have to be determined.

16. In reply to the issue of alternative remedy, learned counsel for the petitioner contends that the need to go before the civil Court would arise only when facts and evidence are not available before the Court. In this case, the statements of the wit nesses and the report of the Sub Divisional

Magistrate were very much available. Even in a recent judgment relating to a rape victim by railway employees, the Supreme Court held that a writ petition was maintainable notwithstanding the availability of a lternative remedy before the civil Court vide CHAIRMAN, RAILWAY BOARD V. CHANDRIMA DAS (AIR 2000 SC 988).

17. I have considered the submissions of both sides.

18. The reason for the arrest of the petitioner is undoubtedly justifiable in this case, in view of the Non-Bailable Warrant by the Court and hence, this is not a case of illegal detention or wrongful confinement. The issue which arises for considerati on is whether there was custodial violence and whether the admitted injuries on the body of the petitioner justify the claim of the respondents that they had to use mild force to bring him under control, as he turned violent at the police station and sub sequently tried to escape at Villupuram. Injuries while in the custody is admitted in the counter affidavit. Two occasions have been mentioned when the police is alleged to have used mild force. The first instance is at the time when he was apprehende d and brought to the police station and as he tried to resist, minimum force was alleged to have been used and he is stated to have manhandled the police constables Narayanan and Balakrishnan. The second incident is at Villupuram when the petitioner is stated to have attempted to escape.

19. The report of the Sub Divisional Magistrate discloses that the statement of the respondents are at variance in several aspects. This Court need not be guided by the findings in the report, but it would be useful to extract the entire report, as it contains the gist of the statements of all witnesses, which would justify the ultimate findings of the Sub Divisional Magistrate. The full text of the report is as follows:
" The Hon'ble VII Metropolitan Magistrate of George Town, Madras has issued a Non-Bailable Warrant against Thiru M.Lakshmanan, Correspondent, Indira Gandhi I.T.I. Of Thirukkanur in a case No.3630/96 under Section 138 of Negotiable Instruments Act. The w arrant with necessary endorsement was duly forwarded to the Station House Officer of Thirukkanur for necessary action.

2. Accordingly the Station House Officer of Thirukkanur and Head Constable Chandrasekaran have arrested the said Thiru Lakshmanan on 29.10.96 at 11.30 hours so as to execute the warrant. After his arrest, he was kept in the Writer's room of Thirukanur since the arrested was a notable person, he was not put up in the lock-up room but only asked to wait in the writer's room until when he was taken to the Metropolitan Court at 04.00 hours on 30.10.96.

3. The accused was produced before the Hon'ble Court at about 11.00 hours on 30.10.96 by the Thirukanur Police. When he was produced before the Hon'ble Magistrate the accused has complained about his bodily injuries to the Hon'ble Magistrate. Therefor e the Magistrate has referred the accused to the Stanley Hospital as MLC case on the same day. The accused was said to

have been discharged on 1.11.96 at about 19.30 hours. There are conflicting causes for his injuries. The accused was seen with serio us injuries on his right leg, left leg, buttocks, back and right hand, thighs, shoulders and stomach.

4. After his discharge from the Stanley Hospital, the accused returned back to Pondicherry. On Saturday 2.11.96 at about 8.30 hours most of the villagers of surrounding hamlet namely Thirukanur, Sithanlanpet, Koonichempet, Settipet, Mannadipet etc abou t 1000 in numbers, have assembled in the main road of Thirukanur and observed bandh in protest against the alleged torture of Thiru Lakshmanan by the beat of lathis by the Thirukanur police. The agitated mob demanded the immediate suspension of all the police staff of Thirukanur police Station. On hearing this problem, both the Sub Divisional Magistrate and the Superintendent of Police rushed to the spot and the police have made elaborate arrangements to maintain peace and to avoid any untoward incid ents in the tense situation.

5. Even after the repeated request made by the Revenue and police to disperse, the mob did not disperse. Consequently peace talks with the representatives of all the villagers were held on the same day at 12.30 hours in the Thirukanur Police Station i n the presence of the Sub Divisional Magistrate and Superintendent of Police (South). In the peace talks the villagers demanded immediate suspension of all the Police officials who were involved in the alleged torture of the said accused Lakshmanan on th e fateful night of 29-30.10.96. The villagers did not accept to any transfer proposal but insisted only on the suspension of police personnel. It was explained to them that the suspension could not be effected without any Inquiry report or establishing prima facie evidence. Then the villagers have insisted for the immediate inquiry and resultant action. The Sub Divisional Magistrate has convinced them that the Inquiry and the consequent action would be completed within two days. Accordingly, the re presentatives and then the whole mob have dispersed shouting that if no action was taken within two days, they would attack the Thirukanur Police Station.

6. The situation was briefed with the senior Superintendent of Police and the District Magistrate and it was decided to conduct a discreet enquiry about the alleged police excess against Thiru Lakshmanan. Accordingly, the enquiry conducted by the Sub Divisional Magistrate is summarised hereunder.

7. The discreet enquiry was conducted by the Sub Divisional Magistrate from 11.00 hours on 3.11.96 to 4.11.96 upto 15.00 hours. The accused Thiru Lakshmanan, Thangarasu, the neighbour of Police Station, Advocate Pa.U.Chemmal, prominent person of Thiru kanur, K.R.Palayam, Koonichampet, Thiru Balakrishnan, Head Constable, Thiru Arumugam, Station House Officer of Thirukanur Police Station, Mr.Mannangatti, Police Constable, Mr.Ramasamy, Police Constable, Mr. Ramamourthy, Police Constable and Mr.Baskaran, H ome Guard, Thiru Yesudass, Police Constable, Thiru Narayanan, Police Constable and others.

8. As per the deposition of the accused Thiru Lakshmanan, he

has stated that the Police Constable Thiru G.Narayanan had tried to take money from the pockets of the accused who was under arrest in the Police Station. In these circumstances on the midni ght of 29-30.10.96 Thiru G.Narayanan was said to have beaten the accused Lakshmanan with his lathi. After 10 minutes, the Head Constable Thiru R.Balakrishnan also have beaten the accused with lathi. Meanwhile some others (names not known) also have bea ten the accused with three new lathis and this caused him serious injuries on his both legs, right hand, back and buttocks brutally. His wearing apparel were removed and not returned back to him but was given with another set of dress to hide blood stai ns. His statement was corroborated with another witness statement of Thangarasu who is the neighbour of the Police Station. On the other hand when the police was enquired, the Station House Officer has stated that he was unaware of the accused injuries as neither Lakshmanan has reported it to the Station House Officer nor the Station House Officer has seen the naked body of Lakshmanan at the time of Despatch to the Madras Court. But the Head Constable Thiru Balakrishnan, Police Constable Jesudas who were the escorts for the accused from the Thirukkanur Police Station to the Madras Court have reported that the accused Lakshmanan while alighting from the Villupuram bus to catch the Madras bus has attempted to escape from the police. In such attempt t he accused has fallen on the rough surface of the metal road and therefore he was injured seriously. They added that the police have not beaten him. It was agreed on both sides that neither the Station House Officer nor circle Inspector was present at the fateful time of causing injuries to the accused.

8. Now the point for determination is whether there is any police excessiveness against the accused Thiru Lakshmanan.

9. On examination of the external injuries of the accused, the type of injuries are not consistent with that of fallen injuries as stated by the police constables Narayanan, Jesudas, etc. Long strips of wounds were seen on his back and buttocks and th igh.

10. It was stated by Thiru Balakrishnan, Head Constable that the accused initially tried to escape from the police custody at about 23.45 hours on 29.10.96 from Thirukkanur Police Station. Had he been handcuffed thereafter, the question of a mpt for escape in Villupuram would not have arised and hence the injuries (i.e. said by the police). Even admitting the version of the police, it is not known why they have not taken him to the Govt. Hospital at Villupuram and statement regarding the tr eatment given at Villupuram are contradictory among the police namely the Station House Officer Arumugam and Head Constable Balakrishnan and this raises suspicion. It has been reported by the police witnesses that wireless message has been given to the Station House Officer after the escape bid by the accused. The SHO has in his statement stated that he was unaware of any wounds on the body of the accused. Hence it is evident that the SHO failed in the discharge of his lawful duties to enquire the ha ppenings during his period of absence.

11. The dress which the accused wore at the time of arrest was changed at the time of despatch from the Police Station to the Court. The accused stated that it was to hide the blood stains in the dress whereas the police have not justified any reason for this change of dress.

12. It appears that there was no enmity between the accused and the police. It was only a simple case of execution of Warrant for a bailable offence. Had he been handcuffed and put up in the lock up room, all these developments would not h

13. It is stated by the Head Constable Balakrishnan that the accused Lakshmanan had attempted for escape after beating the nearby police constable Narayanan. The accused might have used abusive language against police. It is presumed that it might be in retaliation of the same and in an emotional outbreak, the police might have beaten the accused.

14. It is inferred from the result of enquiry that there is definite prima facie evidence to believe police excess in this case. It is suggested that strict disciplinary departmental action may be taken against the erring police officials to inculcate moral fear among them, to avoid such happenings in future and to maintain public peace and tranquility.

Sd/-
(T.KARIKALAN)
SUB DIVISIONAL MAGISTRATE "

20. The stand of the respondents/police before the Sub Divisional Magistrate is completely different from the stand taken in the counter affidavit regarding the first incident. The first incident in the police station, as pleaded in the counter affidav it, is totally absent in the evidence before the Sub Divisional Magistrate, namely, that the petitioner had resisted the arrest and therefore, mild force had to be used against him and that he had assaulted two police constables. On the other hand, the stand of the police before the Sub Divisional Magistrate is that the Station House Officer was unaware of the injuries on the petitioner and that he had not seen the naked body of the petitioner at the time of leaving for Madras. The Sub Divisional Magi strate has been informed only about the second incident when mild force is alleged to have been used against the petitioner at Villupuram when he is stated to have attempted to escape. Therefore, the statement in the counter affidavit that the petitione r had man-handled two Constables at the time when he was taken to the police station and therefore, minimum force had to be used against him is totally belied. According to the respondents (before the Sub Divisional Magistrate), there were no injuries o n the petitioner when he left for Madras. If really the petitioner had man-handled the Constables and as a result, minimum force had been used, such an incident would have been definitely reported to the Sub Divisional Magistrate resulting in using minim um force, which would be amply justified. I have also perused the statement of R.Balakrishnan, Head Constable, before the Sub Divisional Magistrate. According to him, the petitioner was brought to the police station and upto 11.45 p.m., the petitioner w as very calm and cordial. He willingly chose to remain in the police station and at 8.30 p.m., he took tiffin and was talking to the police in a cordial manner and that it was only at 11.45 p.m., the petitioner became violent, beat Narayanan, Police Con stable, and tried to escape. As a result, there was a scuffle outside the police station, and in the process, the petitioner had fallen down and rolled on the road and with the result, sustained abrasions. Rightly, the Sub

Divisional Magistrate had comm ented that the nature of injuries/wounds were not consistent with the injuries which could have been sustained by merely falling down.

21. While the counter affidavit reads as though minimum force had to be used at that time when he was apprehended and brought to the police station, the statement of the Head Constable before the Sub Divisional Magistrate is to the effect that the petit ioner had behaved cordially and was talking to them well and had taken tiffin at 8.30 p.m., and was with them till 11.45 p.m. Coupled with this serious contradiction, the statement before the Sub Divisional Magistrate by the Station House Officer that h e did not see any injury on the body of the petitioner when he left for Madras, is also not consistent with the claim in the counter that minimum force had to be used. Such glaringly contradictory statements clearly establish the falsity of the first inc ident, as pleaded by the respondents.

22. As regards the second incident at Villupuram, in the counter affidavit, it is stated that when they were boarding into the Madras bound bus, the petitioner tried to escape and hence, "some force" was used by the police escort party. In the statemen t of Balakrishnan, Head Constable, who had accompanied the petitioner to Madras, the incident had occurred only when they were alighting from the bus in which they have travelled from Thirukkanur and on arrival at Villupuram and not as stated in the coun ter affidavit as if the petitioner had tried to escape while boarding the Madras bound bus. Balakrishnan has stated that while they were getting down from the bus, he was getting down first, followed by Jesudas, Police Constable and the petitioner. It is stated that the petitioner pushed both of them down forcibly and attempted to run and that while both of them chased the petitioner, the petitioner fell down by tripping on a stone and he was caught. It is further stated that as he fell down, he sust ained injuries, as the place where he

fell down was a rugged portion of the tar road. The statement does not make any whisper of having used "some force" to prevent the petitioner from escaping, as claimed in the counter affidavit.

23. The nature of evidence before the Sub Divisional Magistrate by the policemen is to the effect as if the petitioner was not beaten by them at any time during both the incidents, in contrast to the facts stated in the counter affidavit that on the fir st occasion when the petitioner was brought to the police station, minimum force had to be used and on the second occasion "some force" had to be used at Villupuram when he tried to escape. That is the reason why in the Sub Divisional Magistrate's repor t there is no mention of the police claiming to have used minimum force on both the occasions and the Sub Divisional Magistrate had also commented that the "type of injuries are not consistent with that of fallen injuries as stated by the Police Constabl es." It is rather unfortunate that a solemnly affirmed counter affidavit should have been filed before the High Court by the Superintendent of Police without even verifying the records and giving false details inconsistent with the version of the police witnesses themselves. It is not proper that the Superintendent of Police, who is under a duty to take action

against the erring subordinate staff on the basis of the report of the Sub Divisional Magistrate, should file a counter affidavit trying to pro tect them even by filing a false affidavit. It is the fourth respondent who should have filed the counter affidavit dealing with the allegations pertaining to the facts which are alleged against the police personnel in the particular police station. Wh en serious allegations have been made against named officials, it is for those persons to file the counter affidavit and not the Superintendent of Police who has no personal knowledge of what actually happened in the police station and that too, a counte r affidavit which is inconsistent with the statements of the police witnesses themselves. The manner in which the averments had been made in the counter affidavit read as though the third respondent was an eye-witness to the entire proceedings, which, ad mittedly, is not correct. Reference to two complaints, which have been filed earlier against the petitioner, is also not in good taste. Apart from the fact that the statement in the petitioner's reply that he had been acquitted in those cases is not di sputed by the respondents, it is needless to point out that the pendency of some past complaint against the petitioner is no licence to the police to indulge in custodial violence. The police has to explain the injuries by explaining the circumstances i n a proper manner. The fact that the injuries were sustained by the petitioner while in custody of the police is not in dispute and hence, the burden to explain the injuries is on the police, which has not been properly complied with. On the other hand , affidavit containing false details is filed by an officer who has nothing to do with the actual occurrence and is also inconsistent with the version of the police witnesses themselves. Inconsistent version and false statements thus made, would raise p resumption against the respondents.

24. The contemporaneous evidence recorded immediately after the occurrence by the police witnesses is to the effect that the petitioner was not at all beaten by the police and that the injuries had been sustained only due to the fall of the petitioner o n rough surface on both the occasions. As the medical evidence relating the nature of injuries has falsified the theory of falling on rough surface and clear lathi marks are found as per the medical report, the Superintendent of Police condescends to ad mit the beating, but would state that on both occasions minimum force was used to keep the petitioner under control.

25. The Sub Divisional Magistrate has rightly commented about not only the injuries being inconsistent with the manner in which the respondents have claimed to have inflicted the injuries, but had also correctly expressed surprise as to why the petiti oner was not taken to the Government Hospital at Villupuram and should have been taken to a private Doctor, and his dress alleged to be blood-stained was not produced.
26. We can ignore the evidence or statement of the petitioner himself and his counsel as interested version. The statement of one Thangarasu, who is running a bunk shop/tiffin centre just opposite to the police station is

extracted below. He is the mos t natural and independent witness and would not be interested in antagonising the police, considering the situation in which he was placed.

(TAMIL PORTION DELETED)

27. The above statement clearly explains how the injuries were sustained by the petitioner. As regards the nature of injuries, a series of photographs have been filed in the petitioner's typed set, which clearly bring out the type of injuries sustained by him and there is no objection from the respondents regarding the photographs or the condition in which the petitioner is shown to be. On his right hand, there is a plaster of paris bandage from the hand leaving out the fingers and upto the elbow joi nt. The index finger is separately bandaged. Several injuries are seen all over the body, suggesting beating by any long sized weapon like lathi. Such injuries are seen all over both thighs and buttocks, abrasions and several lathi marks over the righ t side of the back and on the backside of the right upper arm. Several such deep injuries are seen all over the thighs and both legs. There are also punctured wounds on the left hand and leg. The following is the extract from the accident register of the Casualty Department of the Government Stanley Hospital, Chennai regarding the injuries:
(1) Multiple Abrasions & Lathi Marks overback;
(2) Multiple Abrasions Bleeding left thigh Left Glutael region;
(3) Pain Rt index finger & Swelling;
(4) = cm punctured wound Left Leg & Abrasions;
(5) Abrasions & Lathi marks;
(6) Abrasions Rt Leg.

28. There is, of course, no reference to fracture injuries, considering that it was only a preliminary report on first observation and he had been asked to take X-ray of chest and left leg and right hand. Subsequent reports are not made available. T here can be no doubt over the fracture injuries on his right fore arm and index finger which had been bandaged with plaster of paris. That he had sustained such fractures is also amply established by a perusal of the statement before the Sub Divisional Magistrate. The Sub Divisional Magistrate has specifically questioned Arumugam, the Station House Officer, as to how the petitioner could have sustained bone fracture in his hand and the witness had answered that the bone might have been fractured due t o body weight when he fell down. The above facts clearly establish that such grievous injuries, fractures, multiple abrasions have been sustained only due to custodial violence and not due to the victim falling on the ground, as contended by the police witnesses, which is nothing but a farcical and ludicrous excuse, having regard to the type of injuries and the accident report. The further attempt to salvage the issue in the counter affidavit by the third respondent suggesting the use of minimum force is not worthy of acceptance. Apart from the fact that he is not an eye-witness to the incident, the facts pleaded in the counter affidavit is contrary to the positive stand taken by the police witnesses before the Sub Divisional Magistrate. I am, there fore, of the firm view that the petitioner had been subjected to cruel torture and custodial violence.

29. The background of arrest of the petitioner was only to execute a Non-Bailable warrant against him, which is normally overcome by filing a petition to recall the warrant or the accused surrendering before the

Magistrate. The said requirement need no t have led to such a grave altercation between the petitioner and the police. The evidence of all the witnesses, including the police personnel, clearly establish that the petitioner has a considerable social standing. He would not have ordinarily reso rted to any violent resistance if he had been merely asked to accompany the police to Chennai on the next day, in view of the NonBailable Warrant. The Sub Divisional Magistrate had inferred that the accused might have used abusive language against the police and the police might have acted in retaliation. What would have really provoked the petitioner to use abusive language could again be only a guess work. According to the petitioner, the police had demanded money for being let off, which resulted in the petitioner sending a message to his assistants to bring money. But, according to the police, he tried to escape and therefore, had to be brought under control. We cannot come to any conclusion on mere inference or guess work. The injuries had been sustained while in police custody and it is for them to explain. But the police has not come forward with any frank or consistent version. To repeat what has already been stated, if their statement before the Sub Divisional Magistrate is to be acc epted, then, the facts stated in the counter affidavit cannot be accepted. The attitude of the police in not registering the complaint of the petitioner is also improper and only helps to raise a presumption against the police. A complaint when it is l odged before a police station may even be frivolous or false. But it has to be taken on file and registered and has to be dealt with in accordance with law. But to refuse even to register a complaint is a very improper attitude on the part of the polic e and will only raise a presumption that the action of the police lacks bona-fides apart from serious violation of their duties under Section 154(1) of Cr.P.C. and the corresponding Police Standing Orders relating to registration of complaints.

30. The contention regarding alternative remedy of approaching the civil Court does not merit acceptance at least in this case. It has been repeatedly held by the Courts that the burden of disproving custodial violence is on the police, if it is e stablished that the injuries were sustained while in the custody of the police. That in this case injuries were sustained while in custody, is not denied. For all the various reasons stated, the attitude of the police in furnishing contradictory and co nflicting statements of facts, is sufficient to hold that no useful purpose would be served in driving the victim to the civil Court.

31. It is rather unfortunate that the Superintendent of Police, who should take departmental action against the erring police officials to avoid such happenings in future, as suggested by the Sub Divisional Magistrate, had chosen to file a counter affid avit attempting to protect them out of the way by pleading the facts which are not consistent with their own stand before the Sub Divisional Magistrate. The availability of alternative remedy under ordinary law is no bar for the High Court to exercise i ts power and to grant compensation in appropriate cases vide CHAIRMAN, RAILWAY BOARD V. CHANDRIMA DAS (AIR 2000 SC 988), cited above, more so in a case of this type in which the available materials clearly indicate that the action of the respondents is c ulpable.

32. Now, coming to the quantum of compensation, the nature of injuries sustained by the petitioner has already been dealt with. The petitioner had sustained at least two fracture injuries, several abrasions, injuries and punctured wounds, etc., all ove r the body. Whether he had suffered any humiliation or defamation in an unjustified manner as claimed by the petitioner, could be considered if only the police had come out with proper facts as to whether the petitioner had given any provocation for the police to behave harshly with the petitioner. But, as stated earlier, the police has not come forward with any consistent version so as to hold that the petitioner had behaved badly and therefore cannot claim to have been defamed or humiliated. Howeve r, there is certainly no justification for beating a defenceless person in police custody and therefore, he has to be compensated for the injuries, pain suffered by him and the continued medical expenses, which would have been incurred by him. He is als o stated to be an active person who is engaged in his own business activities, and the custodial violence would have certainly immobilised him at least for a month or two. Any compensation to be awarded should also have deterrent effect on the police pe rsonnel not to repeat such inhuman action in future. Normally, compensation would be awarded only against the officials who had actually been the cause for the violence. But, in this case, as the Superintendent of police had chosen to file a counter a ffidavit justifying their conduct, there is no other alternative except to direct the State to pay the compensation. I feel that it would be just and proper to award a sum of Rs.50,000/- as compensation for the injuries, violence, pain and suffering suf fered by the petitioner and a sum of Rs.10,000/- for medical treatment.

33. I also feel that filing of irresponsible counter affidavits before the High Court without even properly verifying the records should also be deprecated and hence, it is just and proper to award exemplary costs. Counter affidavit should have been fi led by the persons who had been actually named and pin-pointed in the affidavit and they have not cared to do so, nor the records relating to the police station have been produced. What has been produced before the Court is only the records relating to the enquiry before the Sub Divisional Magistrate.

Consequently, the writ petition is allowed, subject to the following observations:
(i) The first respondent shall pay a compensation of Rs.60,000/- as compensation with interest at the rate of 6% from 29.10.1996 till the date of payment to the petitioner within four weeks from the date of receipt of a copy of this order;

(ii) The writ petition is allowed with costs of Rs.10,000/-, out of which, a sum of Rs.5,000/- is payable to the counsel and Rs.5,000/- to the Tamil Nadu State Legal Services Authority, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

Index : Yes
Internet: Yes

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To:

1. The Union Territory of Pondicherry
rep. by the Chief Secretary
Government of Pondicherry
Pondicherry.

2. The Inspector General of Police
Police Headquarters
Pondicherry-605 001.

3. The Superintendent of Police (South)
Natesan Nagar
Pondicherry.

4. The Station House Officer
Thirukkanur Police Station
Thirukkanur
Pondicherry-605 501.

5. The Deputy Inspector General
Central Bureau of Investigation
Haddows Road
Chennai-600 006.

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